

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION ) DOCKET NO.  
OF GRANITE PARK HOMEOWNERS ) W-04205A-03-0652  
ASSOCIATION, AN ARIZONA NON-PROFIT )  
CORPORATION, FOR ADJUDICATION THAT )  
IT IS NOT A PUBLIC SERVICE )  
CORPORATION. )

At: Phoenix, Arizona  
Date: February 3, 2004  
Filed: FEB 18 2004

FEB 18 2004

Arizona Corporation Commission  
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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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1 BE IT REMEMBERED that the above-entitled and  
2 numbered matter came on regularly to be heard before  
3 the Arizona Corporation Commission, 1200 West  
4 Washington Street, Phoenix, Arizona, commencing at  
5 10:05 a.m. on the 3rd day of February, 2004.

6  
7 BEFORE: AMANDA POPE, Administrative Law Judge

8 APPEARANCES:

9 For the Arizona Corporation Commission Staff:

10 LISA A. VANDENBERG  
11 Staff Attorney, Legal Division  
12 1200 West Washington Street  
13 Phoenix, Arizona 85007

14 For Granite Park Homeowners Association:

15 MUNGER CHADWICK, P.L.C.  
16 By: Mr. Lawrence V. Robertson, Jr.  
17 Suite 300  
18 333 North Wilmot  
19 Tucson, Arizona 85711

20

21 MICHELE E. BALMER  
22 Certified Court Reporter  
23 Certificate No. 50489  
24  
25

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1 ALJ POPE: Good morning, and welcome to the  
2 Arizona Corporation Commission.

3 This is the time and place set for the hearing  
4 in the matter of the application of Granite Park  
5 Homeowners Association, an Arizona non-profit  
6 corporation, for adjudication that it is not a public  
7 service corporation. The Docket No. is  
8 W-04205A-03-0652.

9 My name is Amanda Pope, and I'm the  
10 Administrative Law Judge assigned to this matter.

11 Let's begin by taking appearances, starting  
12 with counsel for applicant.

13 MR. ROBERTSON: Good morning, Your Honor. My  
14 name is Lawrence V. Robertson, Junior, appearing on  
15 behalf of the applicant, Granite Park Homeowners  
16 Association.

17 ALJ POPE: Thank you. And for Staff?

18 MS. VANDENBERG: Lisa Vandenberg.

19 ALJ POPE: Thank you.

20 Okay. I'll note for the record that there are  
21 no members of the public present for public comment.

22 And I'll start by asking if either of the  
23 parties have procedural matters that they would like to  
24 discuss before we begin.

25 MS. VANDENBERG: No, Your Honor.

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1 MR. ROBERTSON: No, Your Honor.

2 ALJ POPE: Okay. I have one. Hopefully, we  
3 can figure out an equitable way to deal with this.

4 In reviewing the application and supporting  
5 documents and Staff's report, I am a little confused as  
6 to how the recommendation that Staff is making in this  
7 case is consistent with prior case law from the  
8 Commission. And I'm specifically referring to the  
9 directive that speaks to the 51 percent or more of the  
10 existing members having signed the petition for  
11 adjudication.

12 There is a case from 1992, and it was in the  
13 matter of the application of Beaver Dam Estates  
14 Homeowners Association for adjudication. In that case,  
15 Beaver Dam was a proposed subdivision where no lots  
16 were sold, and Commission Staff stated that its  
17 position with regard to the 51 percent requirement was  
18 different depending upon whether the subdivision was  
19 fully developed or whether it was yet to be developed.

20 And I'm wondering -- there's a couple of ways I  
21 would like to propose going about handling this case.  
22 We can either take a break now -- I have a copy for  
23 counsel for both parties -- and have you address the  
24 distinction between your case and Beaver Dam in either  
25 your evidentiary portion and/or your closing argument.



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1 We can take a break after the evidentiary portion and  
2 have you address it in your closing argument, or the  
3 parties can file briefs.

4 Do you have a preference, Mr. Robertson?

5 MR. ROBERTSON: Not being familiar with the  
6 case, Your Honor, not having seen it, and thus,  
7 obviously, not having read it, I don't know the extent  
8 to which our fact situation comports or departs with  
9 the fact situation that was before the Commission at  
10 that time.

11 I think in the interest of both efficiency and  
12 fairness to my client, I would like to avail ourselves  
13 of your first option, if I recall them correctly, of  
14 taking a break, allowing me and the other attorney who  
15 is here in connection with the Association's  
16 application, Mr. Carver -- who is also a witness but  
17 he's a legal business advisor to some of the principals  
18 -- to take a look at that case so that perhaps we would  
19 have an opportunity to address the situation both in  
20 our evidentiary presentation and in any closing  
21 remarks.

22 ALJ POPE: Okay. Do you have an objection to  
23 doing that?

24 MS. VANDENBERG: No objection. I would request  
25 a copy.

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1 ALJ POPE: I have a copy for you as well.

2 Okay. About how long would you like to recess?

3 MR. ROBERTSON: I don't know how long the  
4 decision is.

5 ALJ POPE: Ten pages.

6 MR. ROBERTSON: I think I would like to have a  
7 half an hour both to read it and have time to confer  
8 with my client and my witnesses, particularly as it  
9 might relate to our ability to address any  
10 distinctions, similarities as part of our evidentiary  
11 presentation.

12 ALJ POPE: Okay. So we will take a recess and  
13 we will adjourn until quarter 'til.

14 (A recess was taken from 10:10 a.m. to  
15 10:47 a.m.)

16 ALJ POPE: Back on the record.

17 Mr. Robertson, did you want to start with your  
18 opening statement?

19 MR. ROBERTSON: Yes, Your Honor. It will be  
20 very brief.

21 First of all, I want to thank Your Honor for  
22 the recess that you granted us. And I believe through  
23 the testimony of Mr. Carver, who is going to be  
24 testifying with regard to, among other things, the  
25 CC&Rs that have been established for Granite Park,

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1 we're going to be able to distinguish our fact  
2 situation from the situation that was before the  
3 Commission in the Beaver Dam proceeding.

4 And it's my understanding that Staff also  
5 intends to address the questions that have been raised,  
6 but we do appreciate the opportunity for the recess.

7 My only statement is in the nature of an  
8 observation that I believe you will find, after  
9 consideration of all of the evidence that has been  
10 presented, that we do with our fact situation satisfy  
11 all of the decision-making criteria or directives that  
12 are set forth in the Commission's Decision 55568, which  
13 for simplicity purposes I'll probably refer to as the  
14 directive decision instead of repeating the number each  
15 time.

16 And we have three witnesses today. Mr. Alan  
17 Snyder, Mr. Jerry Carver, and Mr. Chris Dusza.  
18 And when you're ready for the marking of exhibits, I'll  
19 proceed with that.

20 But I think for opening statement purposes,  
21 I'll conclude my remarks at this point.

22 ALJ POPE: Okay. Thank you.

23 Ms. Vandenberg, did you have an opening  
24 statement?

25 MS. VANDENBERG: Just briefly, Your Honor.

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1 Prior to the recess, Your Honor had referred to  
2 Decision 57784, the Beaver Dam decision. And Staff did  
3 have an opportunity to review that during the break.  
4 Staff also agrees that we believe that the case at hand  
5 is distinguishable from that.

6 Staff would also point out that that decision  
7 did take place back in 1991. And since then, Your  
8 Honor is correct that there has been a change in how  
9 Staff views the Commission directive that's out of  
10 Decision 55568, which directs that Staff should insure  
11 that the application for an adjudication not a public  
12 service corporation is a bona fide request.

13 Staff will in its testimony explain why it  
14 believes that it's in the public interest and in  
15 compliance with this decision to approve the  
16 Applicant's request. It is, in Staff's opinion, a  
17 policy call. While the Beaver Dam decision talks about  
18 a policy that Staff had adopted at the time, Staff does  
19 not believe that that decision is controlling or some  
20 sort of stare decisis on Staff's review of this matter.  
21 However, Staff does believe that it is in compliance  
22 with the Commission directives in its recommendation of  
23 approval in this matter.

24 ALJ POPE: Okay. Thank you. Mr. Robertson,  
25 did you want to call your first witness?

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1 MR. ROBERTSON: Yes. Before I do that, Your  
2 Honor, I would like to have some documents marked as  
3 exhibits for identification.

4 ALJ POPE: Okay.

5 MR. ROBERTSON: The first one would be a set of  
6 exhibits that have a cover sheet that says Exhibit,  
7 slash, Witnesses to application. And there are  
8 attached to that Exhibits A through J. I would like to  
9 have that marked as Exhibit A-1 for identification.

10 May we go off the record for one moment?

11 ALJ POPE: Please.

12 (A brief discussion was held off the record.)

13 MR. ROBERTSON: Secondly, Your Honor, is  
14 Exhibit A-2 for identification. I would like to  
15 request the marking of a packet of exhibits. The cover  
16 sheet says Exhibits, slash, Witnesses to amended  
17 application. And that has Exhibits A through M.

18 And then I have finally handed out to the  
19 parties a grouping of Exhibits A-3 through A-7. And  
20 each of those has a cover sheet on the exhibit. And  
21 the second sheet on each of those has a description of  
22 what the particular exhibit is, followed by the exhibit  
23 itself.

24 ALJ POPE: Okay.

25 MR. ROBERTSON: And, finally, Your Honor, in

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1 the hope that it would be of assistance to you and  
2 Staff, I have put together what I call a correlation of  
3 Decision No. 55568 directives and exhibits in support  
4 of the application and amended application.

5 And as you'll note, what I have done is I put  
6 the directive number in the left-hand column, and then  
7 the exhibit number in the right-hand column that we  
8 believe is directly responsive to the particular  
9 directive in question.

10 Now, we have exhibits that are a part of our  
11 presentation today that are in addition to those that  
12 are required by the directives. And that's what  
13 accounts for there being more exhibits within  
14 Exhibit A-1, A-2, and A-3 through A-7.

15 I believe with the exception of Exhibit A-7,  
16 which is a document dated January 30th that is the most  
17 recent assurance of construction of subdivision  
18 improvements, that every other document that we will be  
19 offering today has been submitted to the Staff and the  
20 Commission through filings with Docket Control either  
21 in the form of the original application and supporting  
22 exhibits, the amended application and supporting  
23 exhibits, or correspondence that's been directed to  
24 Docket Control. But since those are not part of the  
25 record by simply being filed with Docket Control, we've

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1   recopied everything and pulled it together for this  
2   presentation.

3 ALJ POPE: Okay. Thank you.

4 MR. ROBERTSON: And with that background, I  
5 would propose to call at this point as my first witness  
6 Mr. Alan Snyder.

7 ALJ POPE: Okay.

8

9

9 ALAN SNYDER,  
10 called as a witness on behalf of the Applicant, having  
11 been first duly sworn by the Certified Court Reporter  
12 to speak the whole truth and nothing but the truth, was  
13 examined and testified as follows:

14

15

## DIRECT EXAMINATION

16

17 Q. (BY MR. ROBERTSON) Good morning, Mr. Snyder.  
18 How are you?

19           A.     Good.

Q. Good. I'm going to start this morning by asking you some questions about your background with regard to the construction of homes and subdivisions and your educational background. Thereafter, I'll ask you some questions about the Granite Park project itself in terms of the history of the area and the

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1 nature of the project. And then we'll proceed with a  
2 discussion of some of the specific exhibits that have  
3 been offered this morning.

4 So with that understanding in mind, let me ask  
5 you, first of all, if you would describe for the record  
6 your educational background.

7 A. Well, I have a degree in civil engineering, a  
8 bachelor of science in civil engineering from the  
9 University of Arizona. I graduated with high honors,  
10 and I'm a member of Tau Beta Pi.

11 Q. During the course of your education with the  
12 University of Arizona in Tucson, did you have occasion  
13 to participate in a work/study program?

14 A. That's how I got through college. I was on a  
15 work/study program. And I worked for Mobile Oil  
16 Corporation, of which the spring semester I would go to  
17 college and then maybe some time the first semester of  
18 the first summer session, and the rest of the year I  
19 would work. And that's how I got through college.

20 Q. Did that program expose you to construction  
21 activity in construction projects?

22 A. Oh, yeah. I started out being an assistant  
23 over in Los Angeles in a place called Vernon. I was  
24 assistant to the engineer over there. And this was a  
25 bulk plant where mobile oil produced all of its oils



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1 and other products. And then after that -- that was my  
2 first session. Then after that, I got involved in  
3 building service stations. And my first service  
4 stations, I started out over there in LA. I worked  
5 over there, and I worked in a place called Watts. And  
6 I built a couple of service stations down there.

7 Then as I progressed up, I became -- I went to  
8 Phoenix in a future time, and there I built service  
9 stations in both Arizona and Utah.

10 Q. And these were for Mobile?

11 A. These were all for Mobile Oil.

12 Q. Okay. Would you describe for Your Honor how  
13 you progressed into the construction of homes and  
14 subdivisions? How you became involved in that part of  
15 the business?

16 A. Well, after I got out of college, I had an  
17 opportunity to go to -- it was over in California to --  
18 because my father wanted to develop some property over  
19 there. And he liked the idea of me going in and having  
20 my own business, so he loaned me \$5,000 to start a  
21 custom home building business, of which I started over  
22 there.

23 And I worked there for a little while, but then  
24 I decided to come back to Arizona because this was --  
25 because where I really liked being over in Arizona, so

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1 I continued the business over here.

2 And in 1982 is when I started in Prescott,  
3 Arizona. And since 1982, Sun Pine Homes, which is our  
4 company, has built over 400 custom homes in the  
5 Prescott area. We've also --

6 Q. Let me ask you a question in that regard. You  
7 indicated that you have constructed over 400 custom  
8 homes in the Prescott area.

9 Is that more custom homes than any other  
10 developer in the Prescott area?

11 A. In the City of Prescott, yes, it is.

12 Q. Okay. Please continue. You were starting to  
13 describe --

14 A. Okay. Then -- but also while we were doing --  
15 while we've been doing custom homes all along, we have  
16 developed numerous subdivisions, of which we've --  
17 typically what we do is we build all of the homes in  
18 the subdivision. In other words, we don't just go sell  
19 lots. And this is what we're planning on doing in  
20 Granite Park.

21 But, for instance, some of the subdivisions  
22 that I have been involved in, my first subdivision was  
23 Lone Pine Village. And that was in California, and  
24 that was approximately 30 homes. Then I had a couple  
25 subdivisions in the late 1980s, of which the developers

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1 went broke so we bought them from the -- you know, from  
2 -- one was from the RTC and another one was, you know,  
3 we got -- basically it was from the bank, and then we  
4 finished them out. And one of them was the first phase  
5 of Timber Ridge. Another one was at a place called  
6 Hidden Valley.

7 And then I developed another subdivision. This  
8 was called Crest Ranch, which was 79 units. And the  
9 last one that we're just finishing -- oh, then we  
10 developed also some condominiums, which is Forest  
11 Highland condominiums, and that's approximately 30  
12 units. And the last one that we're just finishing  
13 right now is called Oak Ridge Terrace, and it's a small  
14 subdivision in Prescott and that's 22 units.

15 And what we're planning on doing here in  
16 Granite Park, we're going to start our first phase here  
17 as soon as our plat is recorded, which is going to be  
18 -- it should be this next week, because everything has  
19 been approved and it's being signed off right now. And  
20 that will be 29 units.

21 And what we will do in Granite Park, we will  
22 develop it in phases. So it's probably -- for us it's  
23 probably going to be a three-phase project of a total  
24 of 105 units, maybe over about a 7-year period.

25 Q. Let's talk about the Granite Park property for

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1 a moment. Can you tell Your Honor a little bit about  
2 the history of the area and the uniqueness of it.

3 A. Well, yeah. Actually, Granite Park was started  
4 in 1905. And originally it was in a place called the  
5 Granite Dells. And originally it was a -- it started  
6 out they developed a small little pond, which they  
7 called a lake out there, and they developed some camp  
8 sites and some novelty cabins. And that lasted until  
9 1926.

10 Then, in 1926, there was a change in ownership  
11 and a whole host of people in the City of Prescott got  
12 involved. And then what they did is they took what  
13 Granite Park was. And, again, Granite Park -- the  
14 location of Granite Park at that time was very critical  
15 because it was on Highway 89, and that was before there  
16 was any Interstate 17.

17 So in order -- let's say if you're going to go  
18 to Flagstaff or up to Route 66, you went through  
19 Wickenburg and you went up Highway 89, you went right  
20 past Granite Park. So they got a lot of people staying  
21 there for the night or for the week, you know, and  
22 stuff like that. And the small lake that it had out  
23 there had some good bass fishing.

24 But in 1926, there was substantial more capital  
25 put into Granite Park, and they designated it as a

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1 theme park. And by a theme park, what they did was  
2 they created the Arizona Garden of the Gods. And there  
3 was a pool and then all of the accessory buildings to  
4 the pool. There was a dance pavilion that was created,  
5 and in those days that was a big deal because people  
6 would come out on weekends to socialize and go dancing  
7 with big bands.

8 And then also at Granite Park they had a little  
9 petting zoo they put in, and then they put a monkey  
10 cage in and they had a couple of monkeys out there all  
11 of the time.

12 Q. Let me stop you for one second for two reasons.  
13 Would you speak a little more slowly so that the court  
14 reporter can keep up with you.

15 And, secondly, I think in your description of  
16 the history you may have neglected to mention something  
17 that might be pertinent in terms of the uniqueness of  
18 the area.

19 Did the lake have a name?

20 A. Oh, yes. Well, the lake originally didn't have  
21 a name, but it was named Tom Nix's lake. And that was  
22 because the movie actor, Tom Nix, filmed -- oh, I don't  
23 know -- portions of maybe 30 or 40 movies out on the  
24 premises of the park.

25 See, the park is very unique because in the

8 Q. Why don't you fast forward a little bit to,  
9 say, starting from the 1940's when the fate of the  
0 Granite Park area changed for a while.

21           Then in the 1940s, it had a change in ownership  
22   which was devastating to the park. And the new person  
23   just didn't manage it very well, and then money wasn't  
24   put back into the park anymore. And so in the 1960s it  
25   closed, and it's been vacant since then.

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1 Q. When did the group that you're associated with  
2 as Granite Park, L.L.C. and its predecessor in interest  
3 acquire the Granite Park property?

4 A. Well, our first acquisition was in 1995. And  
5 that was because a person came into my office and told  
6 me I needed to buy the property and insisted I go out  
7 and take a look at it. I had never been out there  
8 before.

9 When I went out and took a look at it, he was  
10 right. I was ready to buy that portion of it. So I  
11 bought it from him, and then the other owners also came  
12 out of it. There were two other owners. And, you  
13 know, eventually we purchased -- well, it was basically  
14 all of the old Granite Park.

15 Q. And you completed those acquisitions by what  
16 point in time?

17 A. The last one we completed actually -- we had  
18 options on it for quite a while, but we actually  
19 completed the sale -- I think it was in July of 2002.

20 Q. Now, the application and amended application  
21 indicate that the Granite Park project is going to be a  
22 master planned community; is that correct?

23 A. That's correct.

24 Q. And what does that mean when you say a master  
25 planned community?

24 Q. With recognized legally established boundaries  
25 to the master planned community?



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1 A. Yes, it does.

2 Q. And the water system that is the subject of the  
3 application and the amended application before her  
4 Honor today will be located and operated entirely  
5 within that discrete area?

6 A. That's correct.

7 Q. And the only connection, so to speak, with the  
8 outside world for water purposes will be the connection  
9 with the transmission main owned and operated by the  
10 City of Prescott; is that correct?

11 A. That's correct, yes.

12 Q. And you indicated earlier that you anticipate  
13 the development will occur over three phases, three or  
14 possibly more phases, starting with the initial two  
15 phases of 29 units; is that correct?

16 A. That's correct. Yes.

17 Q. Okay. Let's start by taking a look at the  
18 applications and the exhibits. And I'll start with  
19 Exhibit A-1 and ask you to look at Exhibit A to that,  
20 which is the articles of incorporation of the Granite  
21 Park Homeowners Association.

22 Is this the means by which the homeowners  
23 association as a legal entity was originally created?

24 A. That is correct. Yes, it is.

25 Q. And that was done on July 25 of 2003?

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1 A. That's correct.

2 Q. Okay. Now, take a look at Exhibit B to  
3 Exhibit A-1. Were there some changes made in the  
4 articles of incorporation? Because this document  
5 indicates they're the restated articles of  
6 incorporation.

7 A. Yes. There were some additions made to it.

8 Q. Would you describe those for her Honor and the  
9 record, please.

10 A. Okay. Well, the first addition is under number  
11 3, initial business. Okay. Such initial business  
12 shall be the performance of the responsibilities as set  
13 forth in Article 9 below.

14 Q. Now, was that an addition to the original  
15 articles of incorporation?

16 A. That was an addition to it, yes.

17 Q. Okay.

18 A. Okay. Then in -- okay. We'll go to Article 9  
19 maybe. Okay. In Article 9, we added a couple of  
20 things in there. That the Granite Park Homeowners  
21 Association shall be responsibility for the perpetual  
22 ownership and operation and maintenance -- before it  
23 was just perpetual maintenance -- of the following  
24 facilities located within Granite Park, the final plat.  
25 And that's private roadways, potable water system,

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1 et cetera.

2 Q. And for purposes of this proceeding, the key  
3 and the pertinent addition was the ownership and  
4 operation of the potable water system; is that correct?

5 A. That's correct. For this, yeah.

6 Q. So from the outset, that water system will be  
7 owned by the homeowners association; is that correct?

8 A. That's correct.

9 Q. Were there any additional language additions to  
10 the restated articles?

11 A. Yes. There's a -- in number 4, it says -- the  
12 first one was this corporation will have members.

13 Q. Now, that was in the original?

14 A. That's in the original one.

15 Q. Okay.

16 A. Added is the membership shall be limited to  
17 persons owning one or more residential lots within the  
18 Granite Park subdivision, and potable water service and  
19 sewer service from facilities owned, operated, and  
20 maintained by the association shall be limited to its  
21 members.

22 Q. So the effect of this language addition, if I  
23 understand it correctly, is to make it clear that  
24 membership in the association occurs only when a person  
25 acquires one or more of their residential lots within



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1 Q. Okay. Would you turn to Exhibit D, please.  
2 What is that document?

3 A. That's a legal description of Granite Park.

4 Q. Okay. That establishes what the external  
5 boundaries are of the property that's going to be  
6 developed as a master planned community; is that  
7 correct?

8 A. That's correct.

9 Q. And would you turn to Exhibit E, and tell us  
10 what that document is.

11 A. That's a plat of the lots of Granite Park.

12 Q. Does that show the total number of lots if  
13 fully developed are 105?

14 A. Yes, it does.

15 Q. And where on that particular document do lots  
16 1 through 29 appear, which would be the first two  
17 phases?

18 A. Okay. There's some dashed in lines around on  
19 the right lower side. And you go from lots 1 through  
20 11, and then you go from 18 through 35.

21 Q. Do I gather from that that lots 1 through 11  
22 are Phase I and 18 through 29 would be Phase II?

23 A. Actually, that's not the case. But if you want  
24 me to, I think I can explain that to you.

25 Q. Certainly.

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1 A. Okay. Lots 1, 2, 3, 4, 5, 6, 29, 32, 33, 35,  
2 34, 30 and 31, I believe, are Phase I. But we've  
3 grouped them together now.

4 Q. And I wasn't even close.

5 Okay. Would you turn to Exhibit F, please, and  
6 just give a general description of that document, if  
7 you would.

8 A. This is our agreement with the City of  
9 Prescott. The City of Prescott is supplying water for  
10 105 residential units. The City of Prescott is  
11 allowing us to use their assured water supply  
12 designation for us to rely on, the 100-year water  
13 supply. And the homeowners association shall pay the  
14 City of Prescott a monthly fee for the water.

15 Q. Mr. Snyder, I'm going to show you a document  
16 that was shown to me this morning for the first time,  
17 and ask you to identify that for the record.

18 A. Okay. Yeah. Well, this is the Phase I and  
19 Phase II final plat, which is the 29 lots of Granite  
20 Park. Okay. The note about the water --

21 Q. No, no. Let me ask the questions.

22 Is that the form of plat that is to be approved  
23 within the next few days by Yavapai County?

24 A. Yes.

25 Q. Okay. On there I have highlighted, in two

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1 different areas, language that relates to the water  
2 supply situation that will be part of the formal  
3 recorded plat. Would you read that into the record,  
4 please.

5 A. Okay. This is under notes. Water to be  
6 supplied by the City of Prescott. The Granite Park  
7 Homeowners Association will be responsible for the  
8 operation and maintenance of the water system,  
9 including mainline service taps, storage facilities,  
10 pumping facilities, and all other water system  
11 appurtenances.

12 Q. Okay. And would you read the second  
13 highlighted area?

14 A. Okay. That's the water certification, and this  
15 is by the planning and zoning. The subdivision is  
16 located within an area of designated -- as designated  
17 as having assured water supply pursuant to A.R.S.  
18 45-576, Subsection B.

19 Q. So those portions of the plat to be recorded  
20 reflect the essential features of the water supply  
21 agreement with the City of Prescott, do they not?

22 A. Yes, they do.

23 Q. Okay. Let me have you turn to Exhibit G in  
24 Exhibit A-1. And, actually, I will have you turn  
25 beyond that. Mr. Dusza will be testifying to that.

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1 And I think that actually completes my examination of  
2 you with regard to Exhibit A-1. The remaining exhibits  
3 are for other witnesses.

4 So let's turn to Exhibit A-2, which are the  
5 exhibits for the amended application, and I'll have you  
6 look at Exhibit A to that exhibit.

7 A. That's the restated articles of incorporation  
8 of the Granite Park Homeowners Association.

9 Q. And those are the same restated articles of  
10 incorporation that you testified to a few moments ago  
11 that were attached to the original application; is that  
12 correct?

13 A. Yes, they are.

14 Q. Would you turn to Exhibit B and Exhibit C to  
15 Exhibit A-2 and describe for us what those two  
16 documents are?

17 A. Okay. Well, Exhibit B is the -- okay. This is  
18 a petition for support in form of correspondence to be  
19 delivered to the Arizona Corporation Commission. This  
20 is from the Granite Park Homeowners Association  
21 requesting jurisdiction over the water system.

22 Q. Mr. Snyder, let me stop you one moment, if I  
23 may, for purposes of complete clarity in the record.  
24 And in this regard, I'm going to ask you to also put in  
25 front of you Exhibit A-3, which is immediately next to



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1 your left hand, sir.

2 A. A-3.

3 Q. No. Your left hand, sir. That one there. And  
4 I'm going to ask you some questions that might be in  
5 the nature of leading to be sure we have this clearly  
6 in the record, and I hope her Honor and Staff counsel  
7 will allow me to do so.

8 Directing your attention to Exhibit B to  
9 Exhibit A-2, which is by your right hand, Mr. Snyder.  
10 That's the one that you were just describing that's  
11 entitled: Consent in Lieu of Special Meeting of the  
12 Directors of the Granite Park Homeowners Association.

13 By means of that document, did the directors  
14 agree that a special meeting that otherwise might have  
15 been necessary would not be required for purposes of  
16 supporting the association's petition?

17 A. Yes, it does.

18 Q. Okay. And if we go to Exhibit C to  
19 Exhibit A-2, is that a certificate of the resolution  
20 that was adopted by the directors of Granite Park  
21 Homeowners Association at the time they consented to  
22 the waiver of the special meeting?

23 A. Yes, it is.

24 Q. And does that document as well as the consent  
25 reflect that the directors approved and supported the

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1 application that had been filed by the association with  
2 this Commission?

3 A. Yes, it does.

4 Q. And does it also indicate that a petition for  
5 support in the form of correspondence was to be  
6 delivered to the Arizona Corporation Commission?

7 A. Yes, it does.

8 Q. Now, let's go to Exhibit A-3. Does that  
9 document, which is a letter signed by you in your  
10 capacity as a director of the association, which is  
11 addressed to the Commission's Docket Control center,  
12 represent that petition supporting the application in  
13 the form of correspondence that was previously  
14 authorized by the directors?

15 A. Yes, it does.

16 Q. Let's go next to Exhibit F to Exhibit A-2, and  
17 there is a legal description set forth at this exhibit.

18 Is that the same legal description that was  
19 attached to the original application for the Granite  
20 Park area?

21 A. Yes, it is.

22 Q. And let me have you turn to Exhibit G to  
23 Exhibit A-2. This appears to be another map of the  
24 layout of Granite Park showing 105 lots; is that  
25 correct?

2 Q. Now, you advised me when we spoke earlier this  
3 morning that there's been a slight realignment in one  
4 of the boundaries of lots 11 and 10; is that correct?

6 Q. Would you describe that for Your Honor and for  
7 the Staff, please.

15 Q. And that adjustment will not change the number  
16 of lots within the Granite Park master planned  
17 community; is that correct?

19 Q. And it will not change the number of ultimate  
20 potential customers that might be connected to the  
21 water system; is that correct?

23 Q. Okay. Let me have you turn to Exhibit K to  
24 Exhibit A-2. And that appears to be a copy, again, of  
25 the water service agreement with the City of Prescott;

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1 is that correct?

2 A. That's correct.

3 Q. And then let me have you turn to Exhibit N as  
4 to Exhibit A-2. And I overlooked this earlier. I  
5 would also like to have you take a look at -- I believe  
6 it's Exhibit J to Exhibit A-1. Let me double check on  
7 that. No. It's actually Exhibit I to Exhibit A-1.

8 And on each of these documents, there is some  
9 language that appears. Would you read that into the  
10 record, please.

11 A. Sure. Water system will be not located in  
12 public right-of-way. As a consequence, no franchise  
13 from Yavapai County is necessary.

14 Q. Would you expand on that a little bit? Are the  
15 roads and the byways, if you will, within the Granite  
16 Park master planned community going to be privately  
17 owned?

18 A. Yes. They are going to be privately owned and  
19 maintained by the homeowners association.

20 Q. Okay. And as a consequence, there are not  
21 going to be any public rights-of-way where the water  
22 facilities would be located; is that correct?

23 A. That's correct.

24 Q. Okay. In that regard, let me have you turn  
25 back. And just for simplicity, go to Exhibit A to

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1 Exhibit A-2. And I'm looking at the restated articles  
2 of incorporation. Let me have you turn the page to  
3 Exhibit A to that, Mr. Snyder.

4 A. Okay. I'm on A-2. Oh, okay. The restated  
5 articles.

6 Q. Yes. Would you turn to the second page to  
7 number 9.

8 A. Yes.

9 Q. Number 9 with the number 1 in parentheses  
10 within the body of that text, indicates that the  
11 private roadways which may not be dedicated to the  
12 public.

13 Are those the roadways that you were referring  
14 to?

15 A. Yeah. The private roadways which may not be  
16 dedicated to the public. Yes.

17 Q. Okay.

18 A. That's the private roadways within Granite  
19 Park.

20 Q. That's correct. And for those reasons it was  
21 ultimately determined a franchise from Yavapai County  
22 would not be necessary; is that correct?

23 A. That's correct.

24 Q. Okay. Now, let me have you turn to the  
25 remaining exhibits. We've already covered Exhibit A-3.

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1 Let me have you turn to Exhibit A-4.

2                    A.     Okay.

3 Q. Keep turning. One more page. Would you  
4 describe that document for the record, please.

5           A.    Okay.  This is an agreement between Granite  
6   Park, L.L.C., the developer, and the Granite Park  
7   Homeowners Association to turn over the water system as  
8   it is built to the homeowners association.

9 Q. Does that document also provide that the  
10 developer will pay for the construction of the system?

11 A. Yes, it does.

12 Q. And does it provide that as the system is  
13 developed in phases, it will be turned over to the  
14 homeowners association as each phase is completed?

15           A.    Yes, it does.

16 Q. This is the document that was provided in  
17 response to a concern that had been expressed by the  
18 Staff as to whether or not it was clear the homeowners  
19 association would own the water system; is that  
20 correct?

21           A.     That's correct.

22 Q. Okay. Let me have you, while we're dealing  
23 with this document, turn to Exhibit B to this document,  
24 which bears the description: Assurance of Construction  
25 of Subdivision Improvements. And this is the one that

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1 was executed on January 13, 2004 by you on behalf of  
2 Granite Park, L.L.C. and a vice president of the M&I  
3 Marshall & Ilsley Bank.

4 A. Yes.

5 Q. What does that document represent?

6 A. Well, what it represents is that M&I Bank is  
7 guaranteeing that the funds are there and the water  
8 system will be completed. And this is a letter of  
9 credit that shows this.

10 Q. And then the water system facilities to be  
11 constructed are attached as Exhibit C; is that correct?

12 A. Yes. The cost estimate.

13 Q. And also an identification of -- if you'll just  
14 lift the one page you have your finger on and look to  
15 the next immediate page --

16 A. Yes.

17 Q. -- you'll see two categories there that  
18 indicate there in the lower half of the page water and  
19 water relocation.

20 Are those the facilities to be constructed or  
21 relocated, as the case may be, with the funds that have  
22 been guaranteed by M&I Bank?

23 A. Okay. Well, the water facilities going to the  
24 homeowners association is 600 water, which is \$112,950.  
25 The water relocation is actually some city mains that

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1 we need -- that we're going to need to realign down our  
2 road that aren't aligned at this time. So that the  
3 water relocation actually belongs to the City.

4 Q. But Granite Park, L.L.C. is paying for it?

5 A. Oh, yes.

6 Q. And my question is are these facilities  
7 identified here the facilities that are going to be  
8 funded by Granite Park, L.L.C., and the funds have been  
9 guaranteed by M&I Bank?

10 A. Yes.

11 Q. Okay. And I think the last one I have for  
12 you, Mr. Snyder, is Exhibit A-7. And this is also  
13 entitled: Assurance of Construction of Subdivision  
14 Improvements. But this has a date of January 30, 2004,  
15 whereas, the other document had January 13, 2004.

16 What's the difference between the two  
17 documents?

18 A. Okay. The first document went to the County to  
19 show that -- for M&I Bank and myself to sign off that  
20 the money was there to build the water system. That  
21 was done on the 13th. However, that was a fax copy.  
22 And then the next copy is the real copy that was done  
23 as a final copy, which also included Yavapai County,  
24 the project manager, signing off on it.

25 Q. Do I understand that in terms of substantive



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1 content, the only difference between the two documents,  
2 the one that was dated January 13th and the one dated  
3 January 30th, is that in the latter the County has  
4 signed off on the document in addition to the bank and  
5 yourself?

6 A. Yes.

7 Q. Okay. And the reason we put this into the  
8 record was just to show closure, because the County had  
9 not signed off at the time that the agreement between  
10 the L.L.C. and the association was filed with the  
11 Commission in mid-January; is that correct?

12 A. That's correct.

13 MR. ROBERTSON: Okay. Mr. Snyder, I believe  
14 that's all I have of you on direct.

15 Your Honor, I don't know how you would like to  
16 handle this, whether you want us to put on all of our  
17 witnesses first and have Staff conduct its cross, or if  
18 you and Staff would like to do the cross by each  
19 witness.

20 ALJ POPE: I think we'll go ahead and do cross  
21 witness by witness.

22 Ms. Vandenberg, did you have any questions?

23 MS. VANDENBERG: I do, Your Honor.

24

25

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1

## CROSS-EXAMINATION

2

3

Q. (BY MS. VANDENBERG) Mr. Snyder; right?

4

A. Yes.

5

6

Q. I wanted to make sure I have the right name before I start asking you questions.

7

8

9

Okay. First, if you could turn to A-4, because I think that was the last thing you were talking about that I have some questions for you on.

10

A. Exhibit A-4?

11

Q. Yes.

12

A. Okay.

13

14

Q. I'm actually going to ask you about the agreement, and that's the second page.

15

A. Okay.

16

17

Q. You are part of the, I guess, board of the Granite Park Homeowners Association; is that correct?

18

A. That is correct.

19

20

Q. And you are also a member of the Granite Park, L.L.C.?

21

A. That's correct.

22

23

24

25

Q. And I guess I wanted to clarify. The agreement that we're looking at in A-4 is intended to convey the facilities that are going to be built by Granite Park, L.L.C. to the homeowners association when the

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1 facilities are built; is that correct?

2 A. Yeah. As they're built.

3 Q. Okay. And so it talks about on the second page  
4 of the agreement conveying the water system facilities  
5 for Phase I and Phase II.

6 And my first question is -- I think in your  
7 direct you said that Phase I and Phase II total 29  
8 lots. Is that accurate?

9 A. That's accurate.

10 Q. And are you -- is the company planning to build  
11 simultaneously those 29 lots, or is Phase I and Phase  
12 II intended to indicate Phase I meaning those will be  
13 built out first or sold first and Phase II will then  
14 follow, or is that considered an entire section as far  
15 as building and selling purposes?

16 A. That's the entire section. The 29 lots will be  
17 up for sale all at once.

18 Q. And so then the construction of the facilities  
19 for Phase I and Phase II will be built simultaneously  
20 as well. Is that accurate?

21 A. That's correct. And that is in the cost  
22 estimates and in the assurances from M&I Bank.

23 Q. So prior to Phase I and Phase II being conveyed  
24 to the homeowners association, the agreement says that  
25 all necessary approvals will take place.

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1 Does the L.L.C. envision that to include like  
2 ADEQ approval and state approvals?

3 A. Yeah. Every approval that we need.

4 Q. And thus far the water facilities for Phase I  
5 and Phase II, have any of those been constructed at  
6 this point?

7 A. No.

8 Q. So obviously at this point you haven't had ADEQ  
9 test any of the water for this system?

10 A. No.

11 Q. And I noticed in the agreement it says that the  
12 transfer of title will be done in a way that's  
13 agreeable to the association.

14 I'm wondering if as a director of the  
15 association or as a member of the L.L.C., would those  
16 parties be willing to provide a copy through Docket  
17 when those facilities are transferred? Assuming that  
18 this application is approved, which at this point  
19 obviously nobody knows.

20 But assuming that were the case, do you believe  
21 that, I guess, the association would agree to filing a  
22 copy of those transfers when they take place?

23 A. No problem.

24 Q. And I don't know that that's a requirement, but  
25 I just thought I would ask the question.

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1 A. That's fine.

2 MR. ROBERTSON: By your saying no problem, sir,  
3 do you mean yes?

4 THE WITNESS: Yes. Yes.

5 Q. (BY MS. VANDENBERG) And then I noticed, I  
6 think, through your direct and also through the  
7 documentation that the total development is intended to  
8 include 105 lots?

9 A. Yes. When fully developed.

10 Q. And so after Phase I and Phase II, the  
11 remaining lots, are those all going to be offered up at  
12 sale simultaneously or is there going to be a break?

13 A. Well, our plan is this. I mean, this is more  
14 or less likely. Now, you know, plans can change a  
15 little bit. But our plan is that our 29 lots, probably  
16 we'll be selling them for a year to two, for a couple  
17 of years.

18 Because we figured it's a 7-year project. And  
19 if you build 15 in a year, 15 times 7, I believe, is  
20 105. So after we get, like, Phase I and Phase II, the  
21 29 units, our next phase will be 35 lots, or at least  
22 this is what our intention now is.

23 Q. Okay. And assuming that that's the case, when  
24 those 35 lots are offered, are they contiguous to the  
25 29 lots in a way that the water facilities will be

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1 built out for all 35 lots simultaneously?

2 A. That's correct.

3 Q. And then the remainder of the lots, assuming  
4 that the 35 lots are sold in the way that you envision,  
5 would the remainder of the lots then be sold in a  
6 manner in which the facilities will be built  
7 simultaneously to all of the lots that are being  
8 offered?

9 A. Yes.

10 Q. Okay. Being a member of the L.L.C., I was  
11 wondering if you could -- if you're capable of  
12 describing how many parties are comprised of the  
13 L.L.C.?

14 A. Yes. There are three parties.

15 Q. And are those the three directors of the HOA  
16 currently, or are they different parties?

17 A. No. Okay. Two of the directors of the HOA are  
18 also members of the Granite Park, L.L.C. One director  
19 is not.

20 Q. Okay. And so then there's a third party that  
21 is included in the L.L.C.?

22 A. That's correct.

23 Q. I guess this is in regards -- directly in  
24 regards to Phase I and Phase II.

25 When a person comes in to purchase a lot, is

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1 there a mechanism already envisioned by the L.L.C. that  
2 will put that person on notice that if they make this  
3 purchase and become a member of the HOA that they're  
4 becoming a member of the operation of the water  
5 facilities?

6 A. Absolutely. It's in the CC&Rs.

7 Q. And so the CC&Rs would be provided prior to  
8 completion of the sale?

9 A. Oh, yeah. It will be in the CC&Rs. And we  
10 also have a Arizona real estate report that we'll be  
11 providing, too, and it will be in there.

12 Q. To your knowledge, I think you described in  
13 your direct testimony that the company will be -- I'm  
14 sorry. The association, once it owns the facilities,  
15 will be receiving water from a municipality; is that  
16 correct?

17 A. That's correct. yes.

18 Q. And through your knowledge of being part of the  
19 L.L.C., had the developer approached that municipality  
20 and determined whether or not the municipality had a  
21 desire to serve the development on its own without the  
22 use of the HOA?

23 A. Yes. We have done that. But this is a long  
24 running situation, and this is outside the limits of  
25 the City of Prescott. And what they desired to do was

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1 to give us a master meter for the project.

2 Q. And to your knowledge, are there any other  
3 water companies in the area besides the municipality?

4 A. You know, not directly related to near our  
5 project. I mean, there are some water companies, but I  
6 mean, they're not, you know, adjacent to the project or  
7 anything.

8 Q. So no other water supplier is contiguous to the  
9 property? The 105 lots?

10 A. No. No.

11 Q. And to your knowledge, there is no other water  
12 company that's authorized that has a CC&N that includes  
13 the 105 lots?

14 A. No.

15 Q. So the maximum number of parcels that will be  
16 served is the 105?

17 A. That's correct.

18 Q. And are there any other entities beyond those  
19 105 that these water facilities would be used to serve?

20 A. No.

21 Q. And I don't know if you're the right person to  
22 ask this question to. And if you're not, let me know.

23 But have you had an opportunity to review the  
24 Staff Report in this matter, or do you know if one of  
25 the other witnesses have, or who would be the right



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1 person to ask?

2 A. Probably Jerry down there more than myself.

3 MS. VANDENBERG: Okay. Then I will ask him  
4 about that. And I don't think I have any other  
5 questions, Your Honor.

6 ALJ POPE: Okay. Thank you.

7

8

EXAMINATION

9

10 Q. (BY ALJ POPE) I just wanted to clarify. When  
11 you said that only 105 lots would be served, is it also  
12 fair to say that any of the open spaces that require a  
13 water service would receive water from the same source?

14 A. Yes. And that was -- that's in our agreement  
15 with the City of Prescott. Such as the pool and the --  
16 such as the pool. Yeah.

17 Q. Okay. I think I just had a few other things I  
18 wanted to clarify. I just wanted to make sure that it  
19 was on the record that at this time no lots have been  
20 sold?

21 A. That's correct.

22 Q. And there are no contracts pending?

23 A. No.

24 Q. Okay. And the open spaces that we were just  
25 talking about, because this is a gated community, those

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1 spaces are not open to the public in general?

2 A. No, they're not. But we also have an agreement  
3 with the City that -- there is a creek called Willow  
4 Creek -- that we give them a trail easement for a  
5 future possible trail to go through there.

6 Q. Okay. And is that on the southern most portion  
7 of the property, or do you happen to know?

8 A. Well, I can show you on a plat where it goes.

9 Q. Okay.

10 A. Let's see.

11 Q. I think Exhibit G to A-2 is the plat.

12 A. If it's ever built, it would go right up  
13 through here like this.

14 Q. Okay. So --

15 A. Up to here.

16 Q. So it sort of runs northward through the middle  
17 of the property?

18 A. That's correct.

19 Q. Okay. And I remember reading -- I believe it  
20 was in the application -- that there is one well  
21 existing on the property?

22 A. That's correct.

23 Q. Will that be considered part of the assets?

24 A. No.

25 Q. Okay. I think the other thing that I wanted to

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1 know was just generally the overall size of the area of  
2 Granite Park. How many acres?

3 A. 106 acres.

4 ALJ POPE: Okay. I didn't have any other  
5 questions.

6 Did you have any redirect?

7 MR. ROBERTSON: Just a few.

8

9

REDIRECT EXAMINATION

10

11 Q. (BY MR. ROBERTSON) To follow up on her Honor's  
12 question, what will be the range and size of the  
13 various lots? From a portion of an acre to in excess  
14 of an acre? You and I have previously discussed a  
15 range, but it's your testimony.

16 A. Okay. The range in size of the lots are  
17 anywhere from one third acre, approximately, to two  
18 acres, two acres plus.

19 Q. And for the market that you're targeting with  
20 this project, what would be the estimated value or  
21 price range of the lot plus the custom home that will  
22 be located on a lot?

23 A. A half a million dollars and up.

24 Q. So you're dealing with a market here of people  
25 who are relatively sophisticated. And when given a

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1 real estate report and the CC&Rs, they're going to  
2 understand what they're reading and what their rights  
3 are; is that correct?

4 A. Oh, absolutely.

5 MR. ROBERTSON: That's all I have, Your Honor.

6 ALJ POPE: Okay. Thank you.

7 MS. VANDENBERG: Your Honor, I actually have  
8 one more question.

9 ALJ POPE: Okay.

10 MS. VANDENBERG: If that's acceptable.

11 ALJ POPE: That's fine.

12

13 RECROSS-EXAMINATION

14

15 Q. (BY MS. VANDENBERG) Your Honor and your  
16 counsel asked you about G-2. And forgive me. You may  
17 have already explained this.

18 I just want to make sure that the 106 acres,  
19 that includes these open spaces?

20 A. That's correct.

21 Q. And the 106 acres are all owned by the  
22 L.L.C. currently?

23 A. That's correct. Yes.

24 MS. VANDENBERG: I have nothing further.

25 ALJ POPE: Okay. No redirect after that?

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1 MR. ROBERTSON: No.

2 ALJ POPE: Okay. Thank you for your testimony,  
3 Mr. Snyder. You're excused.

4 (Mr. Snyder was excused as a witness.)

5 MR. ROBERTSON: Your Honor, I would like to  
6 next call Mr. Jerry Carver as a witness on behalf of  
7 the Applicant.

8

9 JERRY CARVER,  
10 called as a witness on behalf of the Applicant, having  
11 been first duly sworn by the Certified Court Reporter  
12 to speak the whole truth and nothing but the truth, was  
13 examined and testified as follows:

14

15 DIRECT EXAMINATION

16

17 Q. (BY MR. ROBERTSON) Would you state your name  
18 and address for the record, please.

19 A. Jerry Carver, 4168 Verde Vista Drive, Prescott  
20 Valley, Arizona.

21 Q. Mr. Carver, would you briefly describe your  
22 educational background.

23 A. I received my undergraduate at Morehead State  
24 University in Minnesota. I received my law degree at  
25 the Washburn University of Topeka in Kansas, and that

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1 was about 18 years ago.

2 Q. Are you licensed to practice law in Arizona?

3 A. Yes, sir.

4 Q. How long have you been licensed to practice  
5 here?

6 A. 18 years.

7 Q. Do you practice law in Arizona?

8 A. Yes, sir.

9 Q. And how long have you been practicing?

10 A. 18 years.

11 Q. And how long have you been in the Prescott  
12 area?

13 A. 18 years.

14 Q. Do you have a professional relationship that  
15 covers the provision of legal services to Mr. Alan  
16 Snyder?

17 A. Yes. We have been working for Mr. Snyder since  
18 I've been in Prescott for 18 years. And I believe our  
19 law firm did legal work for him prior to that time.

20 Q. And have you had occasion to do work for  
21 Mr. Snyder and for the Granite Park, L.L.C.?

22 A. Yes, sir.

23 Q. And have you had occasion to also do legal work  
24 for the Granite Park Homeowners Association?

25 A. Yes.

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1 Q. Is real estate work a customary part of your  
2 practice?

3 A. Our practice is, in fact, limited to only real  
4 estate and construction.

5 Q. And in that regard, have you personally had  
6 occasion to work with the preparation of and the  
7 revision from time to time of CC&Rs in connection with  
8 real estate development?

9 A. Yes, sir. Numerous times.

10 Q. For the record, would you describe the nature  
11 and the function of the CC&R as a document?

12 A. The CC&R stands for covenants, conditions and  
13 restrictions. And that's a document that's primarily  
14 recorded against the property and runs with the ground  
15 by the developer. It normally provides for use  
16 restrictions, certain requirements on division of the  
17 property at a later date, what you can and can't build  
18 there.

19 Normally, in a residential situation, it will  
20 prohibit any type of nonresidential activities such as  
21 commercial business, those types of things. But  
22 primarily it protects the land by whatever is in those  
23 CC&Rs.

24 Q. Do CC&Rs on occasion address the existence and  
25 the role of homeowners associations?

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1 A. Yes.

2 Q. And are the rights and powers of homeowners  
3 associations addressed within the CC&Rs?

4 A. Yes.

5 Q. Okay. Let me have you turn to Exhibit A-1, as  
6 has been marked for identification, and have you  
7 specifically -- actually, I meant to have you turn to  
8 Exhibit A-2, Mr. Carver, as it's been marked for  
9 identification. And specifically I would like to have  
10 you direct your attention to Exhibit E.

11 A. Okay.

12 Q. Now, that document is entitled: Declarations  
13 of Covenants, Conditions, and Restrictions for Granite  
14 Park. Is that correct?

15 A. Yes, sir.

16 Q. Does this represent -- strike that.

17 Let me also have you turn to Exhibit A-5 as  
18 marked for identification. And that has a cover sheet  
19 that says: Amendments to CC&R Language to Conform to  
20 Decision No. 55568.

21 Do you see that?

22 A. Yes.

23 Q. And is that referring to a decision of this  
24 Commission?

25 A. Yes, sir.



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1 Q. Okay. Would you direct your attention first to  
2 Exhibit A-5. Describe for her Honor and the Staff the  
3 nature of what we see on these four pages here.

4 A. Okay. Beginning in the A-5 document, page 11,  
5 Section 4.4.16 is a portion of the CC&Rs that refers to  
6 further subdivision. That clause provides that none of  
7 the lots within the Granite Park subdivision may be  
8 further subdivided into smaller lots.

9 It also provides, as is routine in CC&Rs, that  
10 there may be some minor adjustment of lot lines as the  
11 construction progresses. However, we have added  
12 specific language that any re-plat or adjustment of  
13 those lot lines shall not increase the total number of  
14 lots, nor increase the total area of the subdivision.

15 Q. Was that language added as a result of some  
16 early indications by the Commission Staff that this  
17 clause without the addition of that language probably  
18 would not be responsive to the Commission's directive  
19 requirements?

20 A. Yes, sir.

21 Q. Okay. Would you turn to the next page, please.

22 A. The next section is in section 7.3.3, and there  
23 was some language removed. 7.3.3 had to do with  
24 exercise of the voting rights. In this section we  
25 specifically provided that each homeowner or each owner

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1 of each lot would have an equal vote, and that the  
2 developer would only have one vote also. It also  
3 provides that then the majority vote would be  
4 controlling.

5 Originally, there was language in there that  
6 allowed the developer to veto the homeowners' vote if  
7 they determined that it was detrimental to the water  
8 system or to the subdivision. That language was also  
9 removed. So essentially, once there are two lots sold,  
10 those homeowners are going to have a majority vote.

11 Q. And was this language designed to address  
12 concerns that the Commission Staff indicated they had  
13 with regard to the equality of voting rights among  
14 members of the association and the assurance that, in  
15 fact, the members would have majority control at all  
16 times?

17 A. Yes, sir.

18 Q. Okay. Would you turn to the remaining two  
19 pages of Exhibit A-5 and describe those for her Honor,  
20 please.

21 A. The next revision was a removal. The original  
22 CC&Rs allowed for expansion and annexation of  
23 additional property to the Granite Park subdivision.  
24 That was a concern of Staff, and so that was removed so  
25 that this property will be a defined area and will not

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1 be added to, nor will any additions be allowed to the  
2 subdivision, nor to the water system.

3 Q. And that the water service would be limited to  
4 the 105 platted lots and no more; is that correct?

5 A. Yes, sir.

6 Q. And this was also responsive to a Staff  
7 concern; is that correct?

8 A. Yes, sir.

9 Q. Now, let me take you to Exhibit E to  
10 Exhibit A-2. Is that a copy of the CC&Rs for the  
11 Granite Park subdivision in their current form?

12 A. Yes, sir.

13 Q. And does that include the changes that are  
14 indicated in Exhibit A-5?

15 A. Yes.

16 Q. Okay. And these are the CC&Rs that the  
17 developer is going to be recording with Yavapai County;  
18 is that correct?

19 A. Yes.

20 Q. Now, let me have you turn to Exhibit A-6. And  
21 my understanding is that this is a letter that you  
22 prepared for Mr. Snyder to sign on behalf of Granite  
23 Park, L.L.C. the developer; is that correct?

24 A. Yes, sir.

25 Q. Would you describe for the record the general

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1 nature of that letter and the purpose of it and the  
2 legal advice that you gave to Mr. Snyder in that  
3 regard?

4 A. We did not want to presume that this  
5 application was going to be granted. So we did not  
6 want to actually record these current set of CC&Rs  
7 until we knew what would happen with this application.

8 The reason for that is that, number one, it's a  
9 lengthy document. And when they get recorded, at each  
10 time a lot is sold, the homeowners are entitled to  
11 copies of all of the CC&Rs and/or any amendments. And  
12 they are given both as part of the public report and as  
13 part of the title documents from the escrow when the  
14 property is put into escrow for the sale.

15 If this set of documents were recorded and  
16 something happened differently, there could be  
17 confusion with the homeowners. If we went ahead and  
18 recorded a set of documents prior to this adjudication  
19 and it didn't include these types of things, there  
20 would be no protection.

21 What this does now is depending on what the  
22 outcome of this is, assuming that it is granted, then  
23 there will be notification in these CC&Rs and the  
24 homeowners will know that there's going to be homeowner  
25 association control of the water company and they get

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1 to vote. And so they'll know what's happening with the  
2 property before they buy it.

3 Q. And will the form of CC&Rs that are attached to  
4 Exhibit A-2 as Exhibit E be the ones that will be  
5 recorded in the event of a favorable Commission  
6 decision?

7 A. Yes, sir.

8 Q. Now, let me ask you as a final area if you have  
9 a copy of the Commission's Decision 57784 that was  
10 issued in the Beaver Dam Estates matter.

11 A. Yes, I do.

12 Q. And during the recess that her Honor granted  
13 earlier this morning, did you have an opportunity to  
14 review that decision?

15 A. Yes, I did.

16 Q. And do you believe that the fact situation  
17 discussed in that decision is distinguishable from the  
18 fact situation before her Honor this morning?

19 A. Yes, I do.

20 Q. Let me have you, with that thought in mind,  
21 turn to page 5 of that decision. And I'm going to  
22 direct your attention to two specific areas of the  
23 Commission decision on page 5, and one area on page 6.  
24 And I'll indicate those for the record, and then I'm  
25 going to let you proceed to distinguish the current

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1 situation from the situation that was discussed in that  
2 decision as you see fit to proceed.

3 But the first area I would like you to focus on  
4 is page 5 with the sentence beginning on line 4 with  
5 the words, "In situations where the subdivision has not  
6 been fully developed." And that sentence continues  
7 through about the middle of line 8 on page 5.

8 The second text I would like you to look at  
9 also appears on page 5, and it's a paragraph that  
10 begins on line 12 with the words, "Staff has also taken  
11 the position." And concludes on line 18 with the  
12 words, "interpreted to mean influence."

13 And the final area is an area beginning at the  
14 top of page 6 on line 1 with the words, "In a new  
15 development," and concluding with a sentence that ends  
16 on line 6 with the words, "turned over to end users."

17 With those areas in mind, would you describe  
18 why you believe the fact situation before the  
19 Commission today differs from the one that was present  
20 in the Beaver Dam case?

21 A. Okay. As I understand from my reading of this  
22 is that there was a case or a circumstance where  
23 ownership or control, at least, of this water system  
24 would not be turned over until 51 percent of the lots  
25 had been sold, and that the developer would maintain

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1 control until that time or until the lots or the  
2 control was turned over to the homeowners association.

3 Those issues have been dealt with directly in  
4 our CC&Rs. They provide specifically that from the  
5 onset, once the infrastructure, the water system itself  
6 has been constructed, it's going to be immediately  
7 turned over to the homeowners association. So we don't  
8 have to wait for a lot of lots to be sold.

9 It provides that there is a straight majority  
10 rule. So, again, once there are two lots sold, the  
11 developer is going to have one lot. Those homeowners  
12 are going to have at least two votes, and increase each  
13 day thereafter, hopefully, as the lots are sold. So at  
14 no point in time even at the beginning is the developer  
15 going to have a majority control.

16 This case had discussed -- and this is back in  
17 '91 it looks like -- had talked about the developer's  
18 extreme influence over the development until it is  
19 completed.

20 We deal with subdivisions on a daily basis.  
21 And especially when you're looking at a subdivision of  
22 this nature where you're going to have affluent homes  
23 there, you're going to be dealing with sophisticated  
24 people, this developer is not going to have any extreme  
25 influence or control over these homeowners. They're

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1 spending a lot of money here. They're building homes,  
2 and they're going to do what they believe is important  
3 for them and/or for their neighbors. The developer is  
4 not going to sway these people in any manner in my  
5 opinion.

6 And, in fact, we see just the opposite anymore.  
7 The developers are needing to take steps to maintain  
8 some control, because the minute the homeowners get in  
9 there they do what they want. So in my opinion and in  
10 my experience, the situation is completely different  
11 nowadays. And it's even more so different in this  
12 particular subdivision because of the people that are  
13 going to be buying in this subdivision.

14 Q. Mr. Carver, would you turn to Exhibit A of  
15 Exhibit A-2. That's the restated articles of  
16 incorporation.

17 A. Yes, sir.

18 Q. I would like you to look at the second page  
19 under number 9. It sets forth the responsibilities of  
20 the association.

21 A. Okay.

22 Q. And that provides that the association shall be  
23 responsible for the perpetual ownership, operation, and  
24 maintenance, and then it lists a number of facilities  
25 and activities.



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1 Based on your number of years of experience in  
2 dealing with real estate and subdivision developments  
3 and the design and preparation of CC&Rs, would you say  
4 this is a fairly comprehensive statement of the role  
5 and the rights of the homeowners association?

6 A. Most definitely. Normally, the statement --  
7 actually, there is probably not even normally a  
8 responsibilities of the association even within the  
9 articles of incorporation.

10 Q. And in your professional opinion, do you feel  
11 that the authority and the responsibilities that have  
12 been provided for the association in this instance  
13 effectively address any concerns that otherwise might  
14 exist with regard to influence or control of the  
15 developer?

16 A. Yes. And the homeowners are going -- this is  
17 another one of the documents that they'll receive when  
18 they go through their purchase. So they're going to  
19 know this right off the bat.

20 MR. ROBERTSON: Okay. That's all I had of  
21 Mr. Carver, Your Honor.

22 ALJ POPE: Thank you.

23 Ms. Vandenberg?

24 MS. VANDENBERG: Thank you, Your Honor.

25

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## CROSS-EXAMINATION

2

3

Q. (BY MS. VANDENBERG) Well, let's start with the question I asked Mr. Snyder. Have you had an opportunity to review the Staff Report in this case?

4

5

6

A. I have seen the draft. I have not seen the latest one but --

7

8

Q. Okay.

9

A. -- if you have a question I can --

10

Q. If you could turn to page 5, there is a section called the recommendations section. I think it's the third bolded section.

11

12

13

A. Okay. I have it.

14

Q. And in this matter the Staff Report really has two recommendations. And if you could just take a moment and look over those, and I have a couple of questions for you.

15

16

17

18

MR. ROBERTSON: May we go off the record for one second?

19

20

ALJ POPE: Yes.

21

(A discussion was held off the record.)

22

ALJ POPE: Back on the record.

23

THE WITNESS: Okay. I've read those.

24

Q. (BY MS. VANDENBERG) And through direct

25

testimony, you talked about changes to the CC&Rs that

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1 are going to be recorded. And as I think you probably  
2 just read, Staff's recommendation is that those  
3 recorded CC&Rs be provided within 90 days after the  
4 decision, assuming that your request is approved.

5 And my question is -- and I'm assuming you can  
6 speak on behalf of the company -- does the company  
7 agree with that recommendation or will agree to follow  
8 it? And is the 90 days agreeable is what I'm really  
9 asking.

10 A. Yes. We can provide a copy of the recorded  
11 CC&Rs. It takes approximately two to three weeks to  
12 get back the conformed copies. So once that happens,  
13 we can provide a conformed copy to the Commission.

14 Q. And then my other question is on direct you  
15 talked about the need to try to alleviate any potential  
16 confusion, so how the company wanted to wait until  
17 after the Commission had determined whether it was  
18 going to approve the application before making the  
19 recording.

20 My question kind of goes towards purchasing a  
21 lot. I understand that until the Commission makes a  
22 decision, you might not have everything that you need  
23 for the ability to start making sales.

24 But once you're able to make sales, if that  
25 happens prior to recording the new CC&Rs, will

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1 purchasers be given a copy of the new CC&Rs? I think  
2 you might have talked about that. I just wanted to  
3 make sure.

4 A. Actually, there can be no sales --

5 Q. Okay.

6 A. -- until that time. So we would not be able --  
7 the report. And there will not be any sales allowed  
8 until that would occur one way or the other.

9 Q. Until the CC&Rs are recorded? The new ones?

10 A. Yes.

11 MS. VANDENBERG: That's all of the questions  
12 that I have, Your Honor.

13 ALJ POPE: Okay. I don't think I have any  
14 questions for you.

15 So did you have any redirect, Mr. Robertson?

16 MR. ROBERTSON: No, I didn't, Your Honor.

17 ALJ POPE: Okay. Thank you.

18 (MR. CARVER WAS EXCUSED AS A WITNESS.)

19 MR. ROBERTSON: I don't know what Your Honor's  
20 desire is on time. Mr. Dusza will not actually take  
21 that long. We can probably finish him up in 10 minutes  
22 at most.

23 ALJ POPE: That's fine.

24

25

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1 CHRIS DUSZA,  
2 called as a witness on behalf of the Applicant, having  
3 been first duly sworn by the Certified Court Reporter  
4 to speak the whole truth and nothing but the truth, was  
5 examined and testified as follows:

6

7

## DIRECT EXAMINATION

8

9 Q. (BY MR. ROBERTSON) Good afternoon, Mr. Dusza.

10 A. Good afternoon.

11 Q. Would you state your name and business address  
12 for the record, please.

13 A. My name is Chris Dusza. I'm an engineer with  
14 Civil Technical Engineering. Our Phoenix office is  
15 located at 20410 19th Avenue, Suite 110 in Phoenix.

16 Q. Would you briefly summarize your educational  
17 background and professional experience.

18 A. My degree is in watershed science from Colorado  
19 State University. I graduated there in 1992. I guess  
20 that would make me a hydrologist by education. Out of  
21 college I worked for the Navajo County of Public Works,  
22 and then subsequently the Yavapai County Flood Control  
23 District prior to going to work with Civil Tech. I've  
24 been with Civil Tech for approximately eight years.

25 Q. Okay. Have you had occasion to render

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1 professional services in connection with the proposed  
2 Granite Park master planned community?

3 A. I have.

4 Q. What's been the nature of those services?

5 A. We have provided all of the civil engineering  
6 and surveying needs for the developer on this project.

7 Q. Okay. Would you turn to Exhibit A-1 which is  
8 marked for identification. And I would like you to  
9 specifically look at Exhibit G.

10 Would you describe for the record the nature of  
11 that document?

12 A. These are the preliminary construction plans  
13 that were prepared for the water system of Phase I and  
14 Phase II of Granite Park.

15 Q. And were those prepared at about the same point  
16 in time or shortly before the filing of the original  
17 application in this matter, which is in September of  
18 last year?

19 A. Yes, they were.

20 Q. Okay. And were they prepared either by you or  
21 under your supervision and direction?

22 A. Yes.

23 Q. Okay. Would you describe in that regard how  
24 the proposed water system within Granite Park is to be  
25 connected with the transmission main owned and operated

1 by the City of Prescott?

2 A. Yes. There's an existing 10-inch City of  
3 Prescott transmission main which traverses the north  
4 end of the property. We will be relocating a portion  
5 of that 10-inch transmission main so that it follows  
6 the proposed road alignment within Granite Park.

7 Off of that 10-inch transmission main will be a  
8 master water meter, and then from that meter will  
9 subsequently run the distribution system which will  
10 provide domestic water service to the lots at Granite  
11 Park.

12 Q. Okay. Now, let me have you direct your  
13 attention to Exhibit A-2 for identification, and  
14 specifically Exhibit H to that exhibit.

15 And would you describe for the record the  
16 nature of that document?

17 A. That was a document that I had written per your  
18 request, essentially giving an update and perhaps  
19 providing some explanation on how the approval to  
20 construct from ADEQ would be and when it would be  
21 issued for this project.

22 Q. And your estimation at that time was that it  
23 might be by the end of November 2003; is that correct?

24 A. That is correct.

25 MR. ROBERTSON: Now, would you turn to

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1 Exhibit I to Exhibit A-2.

2 And Your Honor and Ms. Vandenberg, in that  
3 regard I would note that Exhibit I to A-2 and  
4 Exhibit J to A-1 are identical. They're the same  
5 document.

6 Q. (BY MR. ROBERTSON) And would you describe for  
7 the record the nature of the document which appears at  
8 the two places I've just referenced?

9 A. This is the approval to construct water  
10 facilities which is issued by the Yavapai County  
11 Development Services Department per their delegation  
12 agreement with ADEQ.

13 Q. And is this the approval to construct that had  
14 been referenced in your letter to me in October of last  
15 year?

16 A. Yes, it is.

17 Q. Now, let me have you turn to Exhibit J to  
18 Exhibit A-2, and describe what appears at this portion  
19 of A-2.

20 A. These are the final construction plans which  
21 were prepared for Phases I and II for the water system  
22 for the Granite Park project.

23 Q. And do these supersede the preliminary  
24 engineering plans that were contained in Exhibit G to  
25 Exhibit A-1?



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1 A. Yes, they do.

2 Q. And are these the plans on which the Arizona  
3 Department of Environmental Quality based its approval  
4 to construct decision as it relates to the water  
5 system?

6 A. Yes. It's actually the county that issues the  
7 approval to construct on behalf of ADEQ. But yes,  
8 these are the plans that that approval was based on.

9 Q. Okay. And in that regard -- I'm going to ask  
10 you because you and I have had occasion to discuss it.

11 Would you describe for the record the  
12 arrangements that have been made with regard to  
13 satisfaction of the fire protection requirements for  
14 the project?

15 A. The 10-inch transmission main, the existing  
16 10-inch main which traverses the property, is fed by a  
17 6-inch main off site. The Central Yavapai Fire  
18 District has a requirement which is common throughout  
19 the state of providing fire flows of 1,000 gallons per  
20 minute for two hours.

21 In analyzing the system, when we tried to pull  
22 1,000 gallons per minute through the existing system,  
23 the losses in that 6-inch line are such that we  
24 actually have negative pressure in the Granite Park  
25 proposed project. Therefore, we looked at three

1 different alternatives to mitigate that problem.

2 One alternative was constructing an on-site  
3 storage facility, which would have jockey pumps and a  
4 fire pump system that would provide the necessary fire  
5 flows to the development.

6 Another option that we looked at was  
7 paralleling the existing 6-inch line that feeds the  
8 10-inch line to eliminate those losses through the  
9 system so that we could get fire flows.

10 And a third option or the third option was  
11 constructing residential sprinkler systems in Phases I  
12 and II of the property in lieu of being able to meet  
13 the 1,000 gallons per minute for two hours requirement  
14 from the Central Yavapai Fire District.

15 Q. Now, has that option been discussed with the  
16 Central Yavapai Fire District?

17 A. Yes, it has.

18 Q. And is that option acceptable to the fire  
19 district?

20 A. Yes, it is.

21 Q. Okay. Let me have you turn to Exhibit L to  
22 A-2. And this indicates the estimated cost of  
23 installation of the water system, and there's a figure  
24 here of \$116,815. And if we go to Exhibit A-4 and  
25 Exhibit C to that document, we have a figure of

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1 \$112,950. And I'm just trying to pull a couple of  
2 loose ends together here.

3                   Would you describe for the record why those two  
4   numbers differ?

5       A.    The first cost estimate that you referred to in  
6   A-2 was a preliminary cost estimate that was prepared  
7   per the requirements of the Yavapai County subdivision  
8   regulations for preliminary plat submittal.

9                   The second cost estimate that you referred to  
10   in Exhibit A-3 -- I'm sorry -- A-4 is the final cost  
11   estimate that was prepared, again, in conformance with  
12   the final plat submittal per the Yavapai County  
13   subdivision regulations. The discrepancy in the figure  
14   is due to slight modifications in the design plans.

15 MR. ROBERTSON: May I have just a moment?

16 ALJ POPE: Sure.

17 MR. ROBERTSON: That's all I have on direct of  
18 Mr. Dusza, Your Honor.

19 ALJ POPE: Thank you.

20 Ms. Vandenberg?

21 MS. VANDENBERG: Thank you.

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## CROSS-EXAMINATION

Q. (BY MS. VANDENBERG) So on direct you had been referred to Exhibit J in A-1. It's the certificate of approval to construct water facilities.

A. Yes.

Q. Would you say it's fair to characterize the facilities involved in Granite Park as being facilities which are designed to connect or interconnect with the City of Prescott's existing facilities?

A. Yes.

Q. And its water source is solely the City of Prescott; is that correct?

A. Yes.

Q. Now, I'm not sure if you are familiar with requirements even outside of the Commission for water testing on -- let me see if I can rephrase this. I'm just not phrasing it very well at all.

Are you familiar with requirements for public water systems, regardless of whether they are under the Commission's jurisdiction, to continue water testing when they have 15 or more connections?

A. To continue water testing?

Q. Well, or to conduct water testing.

A. Yes, I am.

**TEODORO**

1 Q. And so if the application here today were  
2 granted by the Commission, the Granite Park facility  
3 would still have requirements to continue water testing  
4 or to conduct water testing?

5           A.     Yeah.   Regardless of the system ownership,  
6   being that it is a potable water system in the State of  
7   Arizona, we are required per the approval to construct  
8   to conduct pressure tests, to make sure there's no  
9   leaks, as well as bacteriological tests to make sure  
10  that there's no contamination.

11           And the results of those tests, in addition to  
12   the as-built plans after construction, are submitted to  
13   the County per the approval to construct prior to  
14   receiving the approval to operate.

15 Q. And once you receive the approval to operate,  
16 is there any continuing testing requirement that you're  
17 aware of?

18           A.    Not that I'm aware of.

19 MS. VANDENBERG: I have no further questions,  
20 Your Honor.

21 ALJ POPE: Okay. I need just a second.

22

23 EXAMINATION

24

25 Q. (BY ALJ POPE) So are you at all involved with

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1 the -- the certificate of assured water supply? In  
2 this case there's a guarantee from Prescott?

3 A. Yes, Your Honor.

4 Q. Okay. So is it your understanding also that  
5 there is no necessity for a certificate of assured  
6 water supply based on assurances as provided by the  
7 City?

8 A. That's my understanding, yes.

9 ALJ POPE: I don't think I had anything else.  
10 Did you have any redirect?

11 MR. ROBERTSON: No redirect, Your Honor.

12 ALJ POPE: Okay.

13 (MR. DUSZA WAS EXCUSED AS A WITNESS.)

14 MR. ROBERTSON: And with the conclusion of  
15 Mr. Dusza's testimony, that concludes the Applicant's  
16 direct case. And at this time I would propose to move  
17 into evidence Exhibits A-1, A-2, A-3 through A-7.

18 ALJ POPE: Okay. Is there any objection?

19 MS. VANDENBERG: No, Your Honor.

20 ALJ POPE: Okay. Then A-1 through A-7 are  
21 admitted.

22 Okay. Then, Ms. Vandenberg, do you want to  
23 call your witness?

24 MS. VANDENBERG: Staff calls Jim Fisher.

25

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JIM FISHER,

called as a witness on behalf of Staff, having been first duly sworn by the Certified Court Reporter to speak the whole truth and nothing but the truth, was examined and testified as follows:

## DIRECT EXAMINATION

Q. (BY MS. VANDENBERG) Would you please state your name and your business address.

A. My name is Jim Fisher. My business address is the Arizona Corporation Commission, Utilities Division, 1200 West Washington, Phoenix, Arizona.

Q. I'm sorry. Did you state your title already?

A. No, I didn't.

Q. Okay. Great.

A. I'm an Executive Consultant with the Utilities Division.

Q. And how long have you been with the Commission?

A. I've been with the Commission since August of 1987.

Q. In the course of your employment, were you assigned to evaluate and assess the Granite Park Homeowners Association's request to be adjudicated not a public service company?

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1 A. Yes, I was.

2 Q. And was a Staff Report prepared by you or under  
3 your direction in the course of handling this case?

4 A. Yes, it was.

5 Q. I believe what's in front of you has been  
6 marked as S-1 for identification purposes. Could you  
7 identify this item for the record?

8 A. Certainly. S-1 is a January 20, 2004 Staff  
9 Report for Granite Park Homeowners Association request  
10 for adjudication not a public service corporation by  
11 myself.

12 Q. And so S-1 was prepared by you?

13 A. Yes, ma'am. It was.

14 Q. Within the report, I think it's on page 3,  
15 Staff raised a concern that the Applicant had not  
16 demonstrated that it had complete ownership of the  
17 water production and distribution; is that correct?

18 A. Yes, ma'am. It is.

19 Q. And could you describe why at the time that the  
20 Staff Report was authored there was a concern?

21 A. Ownership of the utility facilities is  
22 fundamental to adjudication not a public service  
23 corporation, and is fundamental to Staff's  
24 recommendation for approval of such an adjudication.

25 With the Applicant being unable to demonstrate



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1 that they had the utility facilities, we would be  
2 unable to recommend approval. This issue was  
3 communicated to counsel for the Applicant, and he  
4 represented to me that they were in the process of  
5 preparing adequate documentation to facilitate the  
6 conveyance of the utility facilities.

7 Q. And since that time, since the Staff Report was  
8 docketed, Staff did receive a copy of, I believe,  
9 what's been marked today as A-4; is that correct?

10 A. Yeah. I believe my copy is over in my files.  
11 This is -- yes. Staff has received this agreement,  
12 dated January 16, 2004, between the L.L.C. and the  
13 association.

14 Q. And in the agreement -- you were present when  
15 Mr. Snyder testified; is that correct?

16 A. Yes, I was.

17 Q. And you heard during cross him describe how the  
18 facilities are intended to be conveyed when each phase  
19 is completed?

20 A. Yes.

21 Q. And do you believe that Exhibit A-4 and  
22 Mr. Snyder's testimony alleviates Staff's concern?

23 A. Yes.

24 Q. So at this time does Staff believe that the  
25 association has provided satisfactory documentation of

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1 ownership?

2 A. Yes.

3 Q. Okay. From the original application, Staff had  
4 identified concerns about the distribution of voting  
5 power; correct?

6 A. Yes.

7 Q. And on page 4 of the Staff Report, it indicates  
8 that the Applicant submitted proposed changes to the  
9 CC&Rs to alleviate that concern; is that correct?

10 A. Yes. On page 4 under the section of compliance  
11 with Directive 4, we have a discussion of the original  
12 filed CC&Rs and the voting rights described therein,  
13 and then the amendment that was provided on December 3.

14 Q. And that amendment provides that each member  
15 owner in the association will have the same voting  
16 rights; is that correct?

17 A. Yes.

18 Q. Is that your understanding?

19 A. That's my understanding. That each member,  
20 slash, customer gets one vote and the developer has one  
21 vote total.

22 Q. And assuming that those CC&Rs are recorded,  
23 assuming this application were approved, do you believe  
24 that that change does alleviate Staff's concern?

25 A. Yes. In the event that the Applicants get a

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1 positive approval from the Commission and they follow  
2 through and file the CC&Rs as described in the  
3 discussion here, it would alleviate Staff's concern,  
4 yes.

5 Q. And prior to the beginning of evidence being  
6 presented in this case, you were present when there was  
7 a question raised with regards to the requirement of  
8 having a bona fide request presented to the Commission;  
9 is that correct?

10 A. Yes, I was.

11 Q. And while that issue is somewhat different from  
12 the voting rights, they kind of go along with one  
13 another. In this case, Staff received the request from  
14 the board of directors for the association; is that  
15 correct?

16 A. That's correct.

17 Q. And Staff believed that that was satisfactory  
18 to be in compliance with the Commission's directives;  
19 is that correct?

20 A. Staff made a policy call, Your Honor. And I  
21 believe your question as to Staff's position in the  
22 1992 or 1991 case was right on point.

23 This is a matter on whether we as a  
24 constitutional body in the State of Arizona can  
25 recognize a difference between prospective approval and

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1 only after-the-fact approval.

2 In the facts in this situation, I believe  
3 they're very different than the facts in the case that  
4 you have asked us to distinguish. Fundamentally, the  
5 Beaver Dam case and adjudication request there, the  
6 Commission made a decision based on the body of  
7 evidence.

8 The evidence was fundamental that the HOA was  
9 requesting adjudication for a parcel that was directly  
10 adjacent to a small water company. One of the policy  
11 goals that we have as an organization is to insure that  
12 the small water companies that we have are able to  
13 grow. Fundamentally, the way they grow is when  
14 contiguous parcels request and obtain service. The  
15 decision in that matter, in that Beaver Dam,  
16 accomplished that goal.

17 In this situation, we have a small, distinct  
18 parcel that is not adjacent to or contiguous to any  
19 small water company. Wilhoit Water is down the way, or  
20 rather up the way, by umpteen miles. Probably four  
21 miles, I believe.

22 This is adjacent to the City of Prescott. This  
23 case is looking to do a master meter situation on a  
24 municipal provider. In order to accomplish that, in  
25 order to accomplish obtaining the DWR certification and

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1 the public report, they need a determination from this  
2 organization on whether or not they're a utility or  
3 adjudicated not a public service company.

4 In Staff's review of the materials on this, we  
5 had to make a policy call on whether or not the board  
6 of directors for the association could make the  
7 recommendation or the request as a bona fide for the 51  
8 percent.

9 It's not as tight a reading as was obtained in  
10 the '92 case, but in this case it was enough for our  
11 recommendation to say, we do not need a small water  
12 company of a maximum of 105 units directly adjacent to  
13 the City of Prescott in a master meter situation.

14 For disposition of this case, it seems as  
15 though it would be in the public interest that we  
16 accept the board of directors acting on behalf of the  
17 members to make it a bona fide request, and that we  
18 follow through and see that on a prospective basis the  
19 Applicant meets the criteria on adjudication.

20 I apologize for not distinguishing the case in  
21 my Staff Report. I tried to make the Staff's  
22 recommendation and acceptance on that resolution as  
23 transparent as possible in the Staff Report, and we'll  
24 try to do better later.

25 Q. So Staff recognizes and did recognize in

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1 drafting the Staff Report that there were no members to  
2 the association at the time that the application was  
3 filed?

4           A.     Certainly.

5 Q. And, obviously, with no members, then, Staff  
6 had to determine whether or not this was a bona fide  
7 request on behalf of members that didn't exist?

8 A. Yes, ma'am.

9 Q. And so I think what you have just described is  
10 that Staff in looking at all of the things that the  
11 company did in correcting the CC&Rs demonstrated that  
12 they were acting in a bona fide way on behalf of the  
13 future HOA members?

14           A.    Yes, ma'am.  That's correct.

15 Q. And so it's Staff's belief that the Commission  
16 decision that provides the directive to determine  
17 whether there's a bona fide request is one that is a  
18 guideline. Is that accurate?

19 A. Yes, ma'am. They are guidelines.

20 Q. And that this application, because Staff  
21 believed in viewing all of the evidence, that the  
22 directors were acting on behalf of the membership  
23 satisfies the directive of determining that it's a bona  
24 fide request. Is that accurate?

25 A. Yes, ma'am. That is.

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1 Q. So the substance of the request is in  
2 compliance with the Commission directive?

3 A. Yes.

4 Q. And going to -- I think you kind of alluded to  
5 the Beaver Dam case, which is decision 57784. The  
6 Staff involved in that case, that did not include you;  
7 is that correct, Mr. Fisher?

8 A. I was not direct Staff on that decision. I  
9 believe I was working for one of the Commissioners that  
10 was a signatory to that decision.

11 Q. In fact, do you recall when you first started  
12 reviewing these type of applications?

13 A. Adjudications?

14 Q. Yes.

15 A. For Staff, I believe it would have to be over  
16 the last three years, two years.

17 Q. Okay. And in the Beaver Dam case, in reading  
18 the decision -- because that's the knowledge that you  
19 have of the case; is that correct?

20 A. Yes, ma'am.

21 Q. That sums it up. In reading that decision, is  
22 it accurate that the HOA in that case had elected not  
23 to take service from a water company that was directly  
24 adjacent to the HOA's property?

25 A. Yes.

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1 Q. And so it's conceivable that in that case Staff  
2 was concerned that the HOA was not acting perhaps in  
3 the best interest of the HOA members. Is that  
4 conceivable?

5 A. Certainly.

6 Q. Obviously, you didn't work on the case but --

7 A. No. I didn't work on the case. But that's  
8 very conceivable, yes.

9 Q. And so hypothetically in this case, would Staff  
10 have been interested or concerned if there was a water  
11 company that was directly adjacent to this property  
12 that was able to serve this property?

13 A. Yes.

14 Q. And that would have affected Staff's  
15 recommendation in this case?

16 A. It totally would have affected our  
17 recommendations, and I believe it would have assisted  
18 these gentlemen in obtaining entitlement to their  
19 property in a more timely basis.

20 If, in fact, there were a existing small water  
21 company that was in compliance with the Commission and  
22 ADEQ, they would have been able to enter into an  
23 agreement to extend facilities and fund facilities and  
24 bring that territory into a certificated entity.

25 That's not the case, and that was not the



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1 situation in this case. They're directly adjacent to  
2 the City of Prescott. City of Prescott, you know, if I  
3 had my preference, City of Prescott would have said  
4 ours. Just extend the city limits. They didn't do  
5 that, so we're presented with this situation.

6 Q. They meaning the City of Prescott didn't do  
7 that?

8 A. That's correct. The City of Prescott did not  
9 extend its boundaries. It's extending service. It's  
10 providing direct service to these people. All they  
11 have to do is build. You know, construct and build.

12 Q. And, again, that nuance that you just  
13 described, the City of Prescott being the sole water  
14 source for these facilities, again, does that tend to  
15 distinguish it significantly from the Beaver Dam  
16 situation?

17 A. Yes, ma'am. It does. I think if you look at  
18 the approval to construct that was previously  
19 discussed, it specifically references that it's the  
20 City of Prescott's water system. It's not even talking  
21 about a separate water system. For purposes of  
22 jurisdiction from Yavapai County as a delegate for  
23 ADEQ, they see no distinction. They're seeing that  
24 this is the City of Prescott water system.

25 Q. And that's A-1, Exhibit J that you just

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1 referred to.

2 In Staff's review of whether this is a bona  
3 fide request and whether or not the Applicants are  
4 really choosing to be a nonprofit company, did Staff  
5 take into consideration that the City of Prescott was  
6 providing the water company a master meter or a meter  
7 -- that they were treating them akin to a master meter?

8 A. Yes. Staff considered that significantly.

9 Q. Kind of going back to the actual Staff Report,  
10 do you at this time have any other modifications or  
11 corrections or additions to the Staff Report?

12 A. Not that come to mind.

13 Q. And so do you adopt what's been marked as S-1  
14 for identification as part of your sworn testimony here  
15 today?

16 A. Yes, I do.

17 MS. VANDENBERG: Your Honor, at this time Staff  
18 would like to move S-1 into evidence.

19 ALJ POPE: Any objection?

20 MR. ROBERTSON: No objection.

21 ALJ POPE: Okay. S-1 is admitted.

22 Q. (BY MS. VANDENBERG) On the bottom of page 4,  
23 Staff had discussed concerns about the original CC&Rs,  
24 and I think we already talked about that the company  
25 had provided amended CC&Rs.





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1 here today on whether or not they are a public service  
2 company or not a public service company.

3 Q. But compliance with ADWR is important to the  
4 Commission; is that correct?

5 A. Certainly.

6 Q. And so what you just described, this chain  
7 effect, is that why Staff is recommending that assuming  
8 this application is approved that the company needs to  
9 provide proof of compliance within 90 days after the  
10 decision?

11 A. Yes. There was one little muddy area that I  
12 believe the service contract from the City of Prescott  
13 mentioned the DWR. The DWR issue may, in fact, be  
14 taken care of by the number that the City of Prescott  
15 has agreed to serve. I don't know, and I'm not going  
16 to argue with the testimony that's been made here.

17 All I would like is to have definitive closure  
18 by whatever evidence the Applicant can provide, whether  
19 it's from the City of Prescott or whether it's directly  
20 from DWR. I think it's one issue that needs to be  
21 nailed down. And, hopefully, they can do it in a  
22 timely basis.

23 I've had one conversation -- I've had a couple  
24 of conversations, rather, with the association  
25 regarding the time frame on that. And for sake of

25 Q. Does Staff believe that the application would

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1 look any different than it does today?

2 A. Only as to what we discussed with the members  
3 of the board standing in for the members on the 51  
4 percent. That would be the only difference.

5 Q. Based on your review of the application, do you  
6 believe that approval of the application would be in  
7 the public interest?

8 A. Yes, I do.

9 Q. And do you have anything else that you would  
10 like to add?

11 A. No. I do not.

12 MS. VANDENBERG: I have nothing further, Your  
13 Honor.

14 ALJ POPE: Okay. Any cross?

15 MR. ROBERTSON: A bit. But before I start the  
16 cross, first of all, on behalf of the Applicant, I  
17 would like to thank the Staff for the very cooperative  
18 approach they took with regard to this application, and  
19 the guidance they provided to the Applicants, and the  
20 willingness to work with us. That's very much  
21 appreciated.

22

23 CROSS-EXAMINATION

24

25 Q. (BY MR. ROBERTSON) Mr. Fisher, I'm going to

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1 reverse the order of my cross in light of one of  
2 Ms. Vandenberg's questions.

3 Would you turn to page 5 of the Staff Report,  
4 which is where you're discussing your recommendations.  
5 Do you have that before you?

6 A. Yes, sir.

7 Q. With regard to a couple of questions  
8 Ms. Vandenberg just asked you, in light of your  
9 testimony today, would Staff be willing, so to speak,  
10 to change the language of its recommendation as it  
11 relates to providing direct evidence of ADR compliance  
12 status to read 365 days instead of 90?

13 A. Yes, sir. And I apologize. When counsel asked  
14 me for any changes, I should have made that. It was a  
15 brain cramp.

16 Q. No need for an apology. And that change would  
17 be in both paragraphs under recommendations as it  
18 related to ADWR; is that correct?

19 A. Yes, sir. And with that in mind, sir, with  
20 those changes in mind, Staff would also need to have a  
21 moment just to make sure that we do the -- just to make  
22 sure that we have got the usual null and void language  
23 in that. Yeah. Okay. Thank you.

24 Q. Okay. One last area, Mr. Fisher, and this is  
25 just to close a circle. I'm going to give you a copy



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1 of a fax confirmation sheet of a fax transmittal I sent  
2 you on December 30th and have you look at the  
3 attachments. And I'm also going to have you look at  
4 Exhibit A-5, which was one of the exhibits Mr. Carver  
5 testified to.

6 And if you could take just a minute to see if  
7 the proposed changes to the CC&Rs I faxed to you on  
8 December 30th are the same as those contained in  
9 Exhibit A-5. Keep turning a couple of more pages. One  
10 more. Starting right after my memo to you. Starting  
11 with that, if you'll open A-5, then you can do a quick  
12 side by side.

13 A. I got it.

14 Q. And see if you can confirm that what is set  
15 forth in Exhibit A-5 is the same that I faxed to you.  
16 There's a total of four pages of proposed changes on  
17 each.

18 I would represent to you that they are, but I  
19 want you to have an opportunity to confirm it yourself.

20 A. Yes. They appear to be very consistent.

21 Q. At several different locations in the Staff  
22 Report in your discussion of the different directives  
23 contained in the Commission's directive decision -- and  
24 I'm looking at page 4 of the Staff Report -- you refer  
25 to on December 30, 2003, Applicant sent proposed

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1 changes to the CC&Rs.

2 Are those the ones that you were just looking  
3 at that you're referring to in the Staff Report?

4 A. Yes, sir. They are.

5 MR. ROBERTSON: And, Your Honor, as you may  
6 recall, Mr. Carver testified those changes were carried  
7 into the CC&Rs in their final form.

8 That's all I have. Thank you.

9 THE WITNESS: Thank you.

10 ALJ POPE: I have just a few questions.

11

12

EXAMINATION

13

14 Q. (BY ALJ POPE) In making the recommendation  
15 that ADWR compliance be filed within 365 days of a  
16 decision, you're not taking a position as to whether  
17 Granite Park needs to obtain a certificate of assured  
18 water supply?

19 A. No, I'm not. As a matter of fact, I saw the  
20 language that we were -- page 5. There's discussion on  
21 the Arizona Department of Water Resources, which that  
22 paragraph is my best knowledge on that issue as I sit  
23 here today.

24 Without going through the files, I mean, I know  
25 that the City of Prescott indicated it's a municipal

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1 supply and that there may not be a certificate of  
2 assured required. I've had conversations with the  
3 association. We haven't been able to nail it down.

4 Q. Okay. I just wanted to be sure that everyone  
5 understood that compliance could come in different  
6 forms depending on the outcome as to the certificate,  
7 the necessity of the certificate or not.

8 A. Yes, ma'am. I envision that, you know, we  
9 could get a couple items. One being an assured water  
10 supply certificate from the Department of Water  
11 Resources based on the supply provided in the contract  
12 from the City of Prescott, or a letter from the  
13 Department of Water Resources saying that per the  
14 requirements of the City of Prescott's designation and  
15 this contract, you don't need one.

16 Q. Okay. Going back to the issue of how this case  
17 is distinguished from the Beaver Dam case, did you hear  
18 Mr. Carver testify earlier that with regard to the  
19 issue of influence it's been his experience that a  
20 developer does not have undue influence over the  
21 members of a homeowners association?

22 A. Yes. I heard Mr. Carver's testimony.

23 Q. Do you think that that is an accurate  
24 statement, and do you have an opinion on that issue?

25 A. Well, it's based on Mr. Carver's experience,



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## REDIRECT EXAMINATION

Q. (BY MS. VANDENBERG) Mr. Fisher, in cross you agreed to amend Staff's recommendation with regards to ADWR to 365 days.

Staff is still recommending that the recorded CC&Rs be provided within 90 days of the decision; is that correct?

A. That is correct. If it is easier for --

Q. And the reason would be because we want to insure -- while the testimony has been that these amended recorded CC&Rs would be the only ones that purchasers would be provided, we want to insure that that's what happens. Is that accurate? With the 90 day requirement as opposed to extending it out to a year?

A. Yes. That is true. Let's not lose sight of the fact that in order to properly entitle this land before they can sell anything, they've got to get DWR. In order to get DWR, they've got to get a decision from us on whether it's a PSC or not. Once they have a determination on PSC, then they can get their DWR, then they can get their public report. But having the CC&Rs on a timely basis would be best.

MS. VANDENBERG: I have nothing further, Your

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1 agree to the ramifications of adjudication.

2 I think that's really what was at heart in just  
3 reading the Beaver Dam decision. I don't have any  
4 other knowledge of the effects of the case. I think  
5 that was what was at the heart in the Commission's  
6 decision not to approve the application.

7 In that case, as we already talked about, the  
8 developer had made a decision not to pursue receiving  
9 service from a water company that was already under the  
10 Commission's jurisdiction that was contiguous to the  
11 property that the developer wanted to have adjudicated.

12 In this case, I think what Staff has done is it  
13 has looked at the Commission's directives, which I  
14 would highlight and stress that while Staff obviously  
15 wants to not only meet but exceed every requirement  
16 that the Commission places on it, the directives in  
17 Commission Decision 55568 are guidelines. They should  
18 be used as guidelines.

19 And in this case Staff had to make a decision,  
20 because there were no members, whether or not to  
21 elevate form over substance. And in this case Staff  
22 believed because of all of the evidence that it was in  
23 the public interest to pierce beyond the formalities of  
24 membership and look to whether or not the directors  
25 were acting for the membership's interests. That's

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1 what Staff believes the directive was trying to insure  
2 Staff would do.

3           The petition was filed by -- I guess you could  
4 make the argument 51 percent or more, because 51  
5 percent of zero is still zero. I don't know that  
6 that's really the position Staff wants to take. I  
7 think it's more beneficial that we keep in mind that  
8 not only these directives are guidelines, but that  
9 Staff really looked at the heart of what was going on  
10 in this case. And because of the changes to the voting  
11 rights and things of that nature, Staff believes that  
12 the HOA is prepared when it does have members to act in  
13 the members' best interest.

14           And I think that's really what we should be  
15 doing as Staff is insuring when we recommend that a  
16 company be adjudicated. That we're doing it because we  
17 think that the members are going to have knowledge.  
18 That they are going to be running -- you know, owning  
19 and having voting rights and running the water company.

20           I think because of the changes to the CC&Rs  
21 and, as the discussion has presented, the report that  
22 they should receive, that this is a transparent  
23 situation.

24           The other thing is in reviewing the case law  
25 such as Surview, I don't think that there's any legal

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1 Honor.

2 (MR. FISHER WAS EXCUSED AS A WITNESS.)

3 ALJ POPE: Okay. Did you have a closing  
4 statement, Mr. Robertson?

5 MR. ROBERTSON: Very brief, Your Honor.

6 I handed out earlier today the correlation  
7 sheet on where we feel that our direct case exhibits  
8 are directly responsive to and in satisfaction of the  
9 seven different directives set forth in the  
10 Commission's directive decision.

11 For that reason, and also for the policy  
12 reasons that the Staff witness testified to with regard  
13 to the Beaver Dam case versus this case, as well as the  
14 factual distinctions that we believe both he and  
15 Mr. Carver pointed out, we believe that a favorable  
16 recommendation and decision on the amended application  
17 and the application in this proceeding are warranted.  
18 Thank you.

19 ALJ POPE: Thank you.

20 Ms. Vandenberg?

21 MS. VANDENBERG: Thank you, Your Honor.

22 The decision that Your Honor had mentioned with  
23 the Beaver Dam, it says on page 5, the Commission  
24 states that it's essential that a majority of the  
25 members of the homeowners association understand and



3           A.   Obtaining the public report which will discuss  
4   that this system is going to receive water through its  
5   association is transparent. That's clarity. It  
6   alleviates notice concerns on my part.

13           In my experience, CC&Rs are not normally read  
14 unless you have somebody that writes them or has to  
15 read them or has to discuss them. They're tedious. A  
16 public report, on the other hand, for somebody who is  
17 building a custom home in a distinctive area adjacent  
18 to Prescott are more likely to be read from my  
19 experience. And the discussion on the water system  
20 will be far more clear in the public report, so I'm  
21 fine with that.

24 Did you have any redirect?

25 MS. VANDENBERG: I have just one clarification.

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1 prohibition to the board of directors making this  
2 application. And I think as Staff's witness,  
3 Mr. Fisher, talked about, Staff made a decision whether  
4 to encourage or discourage a company from preparing to  
5 serve in an area that it's wanting to develop.

6 And because in this case the Applicant has  
7 acted in a manner in which Staff believes it has  
8 addressed all of the Commission's concerns laid out in  
9 the directives, Staff believes that it's in the public  
10 interest and is appropriate to approve this  
11 application.

12 ALJ POPE: Okay. Thank you. Thank you  
13 everyone for coming here today.

14 And with that, I will take the matter under  
15 advisement and issue a recommended opinion and order.  
16 And we're off the record.

17 (The Hearing concluded at 1:05 p.m.)

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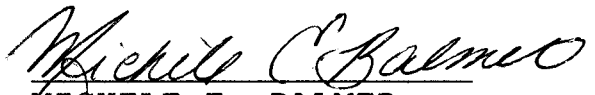
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1 STATE OF ARIZONA )  
2 ) ss.  
3 COUNTY OF MARICOPA )  
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6 I, MICHELE E. BALMER, Certified Court Reporter  
7 No. 50489 for the State of Arizona, do hereby certify  
8 that the foregoing printed pages constitute a full,  
9 true and accurate transcript of the proceedings had in  
10 the foregoing matter, all done to the best of my skill  
11 and ability.  
12

13 WITNESS my hand this 16th day of February,  
14 2004.  
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MICHELE E. BALMER  
Certified Court Reporter  
Certificate No. 50489